FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 539/2006
(Sadashio Shrawan Gawande & 9 others **VERSUS** Savitribai Gulabchand Harialke & another **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Paliwal, counsel for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 10th September, 2007.

Heard the learned counsel for the appellant.

The respondent no.1 is the original plaintiff. The respondent no.2 and the appellants are the original defendants. The plaintiff had filed a suit against the defendant for possession of the suit property. The suit was dismissed by the judgment dated 04.03.1997. However, the first appellate Court allowed the appeal filed by the plaintiff and decreed the claim of the plaintiff by a judgment and decree dated 02.01.2006. The judgment passed by the first appellate Court is challenged in this second appeal.

It was noticed as early as on 01.06.2007 that the respondent no.1 had expired & the matter was thereafter listed before the Registry from time to time. The matter then came up before this Court on 20.08.2007, 27.08.2007 and 03.09.2007. The counsel for the appellant sought time to take necessary steps on all these occasions. This Court had granted one week's time to the appellant by an order dated 03.09.2007, as a last chance.

Today, Mr.Paliwal, the learned counsel for the appellants, submits that the counsel has not received any

instructions from his client as yet. The appeal has already abated against the respondent no.1 in view of the fact that the appellant had not take steps to bring the legal heirs of deceased respondent no.1 on record within the prescribed period of limitation. The respondent no.2 is a formal party. The suit of the plaintiff/respondent no.1 was decreed by the judgment passed by the first appellate Court on 02.01.2006. In view of the aforesaid position, the second appeal stands abated as the appellant has failed to take steps to bring the legal heirs of deceased respondent no.1, the only contesting party, on record.

The second appeal is, therefore, dismissed as abated.

JUDGE

APTE